

ESTTA Tracking number: **ESTTA178929**

Filing date: **12/05/2007**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	Frito-Lay North America, Inc.
Granted to Date of previous extension	12/05/2007
Address	7701 Legacy Drive Plano, TX 75024 UNITED STATES
Attorney information	Joseph J. Ferretti Frito-Lay North America, Inc. 7701 Legacy Drive, Mail Stop 3A-421 Plano, TX 75024 UNITED STATES trademarks@fritolay.com Phone:972-334-3403

### Applicant Information

Application No	77137061	Publication date	08/07/2007
Opposition Filing Date	12/05/2007	Opposition Period Ends	12/05/2007
Applicant	Regco Corporation 46 Rogers Road Haverhill, MA 01835 UNITED STATES		

### Goods/Services Affected by Opposition

Class 030. All goods and services in the class are opposed, namely: Flour-based chips; Grain-based chips; Pita bread; Pita chips
---

### Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

### Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	689601	Application Date	01/08/1959
Registration Date	12/08/1959	Foreign Priority Date	NONE
Word Mark	FRITOS		

Design Mark	
Description of Mark	NONE
Goods/Services	Class U046 (International Class 029, 030). First use: First Use: 1932/03/27 First Use In Commerce: 1932/03/27 CANNED FOODS-NAMELY, CHILI CONTAINING MEAT, TAMALES CONTAINING MEAT, MEAT, MEAT SAUCES AND FOR CONFECTIONS AND SNACK ITEMS-NAMELY, WAFERS, CORN CHIPS, CAKES, POTATO CHIPS, CANDY, AND SHELLLED PEANUTS

U.S. Registration No.	1529786	Application Date	12/07/1987
Registration Date	03/14/1989	Foreign Priority Date	NONE
Word Mark	FRITOS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1986/11/12 First Use In Commerce: 1986/11/12 CLOTHING, NAMELY SWEATSHIRTS, SHIRTS [ , AND FLEECE TOPS AND BOTTOMS ]		

U.S. Registration No.	2502596	Application Date	04/27/1999
Registration Date	10/30/2001	Foreign Priority Date	NONE
Word Mark	FRITOS CHILI PIE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1999/01/00 First Use In Commerce: 1999/01/00 PACKAGED MEAL COMBINATIONS CONSISTING PRIMARILY OF CHILI OR SNACK FOOD DIPS CONTAINING MEAT OR CHEESE Class 030. First use: First Use: 1999/01/00 First Use In Commerce: 1999/01/00 CORN-BASED SNACK FOODS, NAMELY, CORN CHIPS; SAUCES AND SALSA		

U.S. Registration No.	2582071	Application Date	08/21/2001
Registration Date	06/18/2002	Foreign Priority Date	NONE
Word Mark	FRITOS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1999/10/00 First Use In Commerce: 1999/10/00 PACKAGED MEAL COMBINATIONS CONSISTING PRIMARILY OF CHILI; SNACK FOOD DIPS; BEAN DIP Class 030. First use: First Use: 1991/00/00 First Use In Commerce: 1991/00/00 CORN-BASED SNACK FOODS, NAMELY, CORN CHIPS AND PUFFED CORN SNACKS; SAUCES AND SALSA		

U.S. Registration No.	2582051	Application Date	08/15/2001
Registration Date	06/18/2002	Foreign Priority Date	NONE
Word Mark	FRITOS FLAVOR TWISTS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2001/01/30 First Use In Commerce: 2001/01/30 CORN-BASED SNACK FOODS, NAMELY, CORN CHIPS		

U.S. Registration No.	2607824	Application Date	03/24/1999
Registration Date	08/13/2002	Foreign Priority Date	NONE
Word Mark	FRITOS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2002/02/04 First Use In Commerce: 2002/02/04 Corn-based snack foods, namely, corn chips		

U.S. Registration No.	2738704	Application Date	02/11/2002
Registration Date	07/15/2003	Foreign Priority Date	NONE
Word Mark	NOTHING SATISFIES LIKE FRITOS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2001/02/00 First Use In Commerce: 2001/02/00 CORN-BASED SNACK FOODS, NAMELY, CORN CHIPS		

U.S. Registration No.	3240429	Application Date	10/18/2004
Registration Date	05/08/2007	Foreign Priority Date	NONE
Word Mark	FRITOS BRAND		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 2004/02/06 First Use In Commerce: 2004/02/06 BEAN DIP; SNACK FOOD DIPS; PACKAGED MEAL COMBINATIONS CONSISTING PRIMARILY OF CHILI Class 030. First use: First Use: 2004/02/06 First Use In Commerce: 2004/02/06 CORN-BASED SNACK FOODS, NAMELY, CORN CHIPS AND PUFFED CORN SNACKS; SAUCES; SALSA		

U.S. Registration	792667	Application Date	07/27/1964
-------------------	--------	------------------	------------

No.			
Registration Date	07/13/1965	Foreign Priority Date	NONE
Word Mark	DORITOS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U046 (International Class 030). First use: First Use: 1961/09/01 First Use In Commerce: 1961/09/01 [ CORN CHIPS, POTATO CHIPS, ] TORTILLA CHIPS [ , PRETZELS, AND NUT MEATS ]		

U.S. Registration No.	1528348	Application Date	12/07/1987
Registration Date	03/07/1989	Foreign Priority Date	NONE
Word Mark	DORITOS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1986/11/12 First Use In Commerce: 1986/11/12 CLOTHING, NAMELY SWEATSHIRTS, SHIRTS, AND FLEECE TOPS AND BOTTOMS		

U.S. Registration No.	1777351	Application Date	06/18/1991
Registration Date	06/15/1993	Foreign Priority Date	NONE
Word Mark	DORITOS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1991/03/01 First Use In Commerce: 1991/03/01 crackers		

U.S. Registration No.	2687285	Application Date	04/19/2001
Registration Date	02/11/2003	Foreign Priority Date	NONE
Word Mark	DORITOS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 2001/09/09 First Use In Commerce: 2001/09/09 Packaged meal combinations consisting primarily of chili or snack food dips containing meat or cheese		

U.S. Registration No.	2428495	Application Date	03/14/2000
Registration Date	02/13/2001	Foreign Priority	NONE

		Date	
Word Mark	DORITOS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1999/11/00 First Use In Commerce: 1999/11/00 CORN-BASED SNACK FOODS, NAMELY, TORTILLA CHIPS		

U.S. Registration No.	2719517	Application Date	12/02/1994
Registration Date	05/27/2003	Foreign Priority Date	NONE
Word Mark	DORITOS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1994/05/01 First Use In Commerce: 1994/05/01 tortilla chips		

U.S. Registration No.	2753403	Application Date	06/24/1999
Registration Date	08/19/2003	Foreign Priority Date	NONE
Word Mark	DORITOS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 2001/09/09 First Use In Commerce: 2001/09/09 SNACK FOOD DIPS Class 030. First use: First Use: 2001/09/09 First Use In Commerce: 2001/09/09 SAUCES AND SALSA		

U.S. Registration No.	2783008	Application Date	07/30/2002
Registration Date	11/11/2003	Foreign Priority Date	NONE
Word Mark	DORITOS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1999/11/00 First Use In Commerce: 1999/11/00 CORN-BASED SNACK FOODS, NAMELY, TORTILLA CHIPS		

U.S. Registration No.	2924158	Application Date	11/27/2002
Registration Date	02/01/2005	Foreign Priority Date	NONE
Word Mark	DORITOS		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 2004/02/12 First Use In Commerce: 2004/02/12 snack mix comprised of tortilla chips, multigrain snack chips, cheese flavored puffed corn snacks, pretzels, ready-to-eat cereal

U.S. Registration No.	2961195	Application Date	08/27/2003
Registration Date	06/07/2005	Foreign Priority Date	NONE
Word Mark	GOTTA GET DORITOS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2003/10/01 First Use In Commerce: 2003/10/01 CORN-BASED SNACKS, NAMELY, TORTILLA CHIPS		

U.S. Registration No.	3197351	Application Date	07/22/2004
Registration Date	01/09/2007	Foreign Priority Date	NONE
Word Mark	DORITOS LIGHT		
Design Mark			
Description of Mark	The mark consists of an upside down triangle and the stylized wording, DORITOS LIGHT, with a stylized person forming the letter "I" in the word LIGHT and does not include the extraneous components, ALL THE TASTE, 1/3 FEWER CALORIES THAN REGULAR TORTILLA CHIPS, as well as others.		
Goods/Services	Class 030. First use: First Use: 2004/10/00 First Use In Commerce: 2004/10/00 CORN-BASED SNACK FOODS, NAMELY, TORTILLA CHIPS		

U.S. Registration No.	1100909	Application Date	01/03/1977
Registration Date	08/29/1978	Foreign Priority Date	NONE
Word Mark	TOSTITOS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1977/11/28 First Use In Commerce: 1977/11/28 [ POTATO CHIPS, CORN CHIPS AND ] TORTILLA CHIPS		

U.S. Registration No.	1528349	Application Date	12/07/1987
Registration Date	03/07/1989	Foreign Priority Date	NONE
Word Mark	TOSTITOS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1986/11/12 First Use In Commerce: 1986/11/12		

	CLOTHING, NAMELY SWEATSHIRTS, SHIRTS, AND FLEECE TOPS AND BOTTOMS
--	---

U.S. Registration No.	2187806	Application Date	10/10/1997
Registration Date	09/08/1998	Foreign Priority Date	NONE
Word Mark	BAKED TOSTITOS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1993/01/00 First Use In Commerce: 1993/01/00 Snack foods, namely tortilla chips		

U.S. Registration No.	2341230	Application Date	06/07/1999
Registration Date	04/11/2000	Foreign Priority Date	NONE
Word Mark	TOSTITOS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1992/06/00 First Use In Commerce: 1992/06/00 Sauces and salsa		

U.S. Registration No.	2728067	Application Date	03/18/2002
Registration Date	06/17/2003	Foreign Priority Date	NONE
Word Mark	TOSTITOS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2002/03/00 First Use In Commerce: 2002/03/00 CORN-BASED SNACK FOODS, NAMELY, TORTILLA CHIPS; PICANTE SAUCE; SALSA		

U.S. Registration No.	3030701	Application Date	07/27/2004
Registration Date	12/13/2005	Foreign Priority Date	NONE
Word Mark	TOSTITOS BRAND DIPS & SALSAS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 2004/10/01 First Use In Commerce: 2004/10/01 SNACK DIPS Class 030. First use: First Use: 2004/10/01 First Use In Commerce: 2004/10/01 SALSA AND PICANTE SAUCE		

U.S. Registration No.	3152298	Application Date	11/10/2004
Registration Date	10/03/2006	Foreign Priority Date	NONE
Word Mark	TOSTITOS. SHARE SOMETHING GOOD.		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2005/01/15 First Use In Commerce: 2005/01/15 CORN-BASED SNACK FOODS, NAMELY, TORTILLA CHIPS; SALSA; SAUCES		

U.S. Registration No.	752220	Application Date	10/31/1960
Registration Date	07/02/1963	Foreign Priority Date	NONE
Word Mark	CHEE.TOS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U046 (International Class 030). First use: First Use: 1948/09/30 First Use In Commerce: 1948/09/30 Cheese Flavored Corn Product in Puffed Form		

U.S. Registration No.	1089385	Application Date	09/29/1977
Registration Date	04/11/1978	Foreign Priority Date	NONE
Word Mark	CHEE-TOS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1952/06/00 First Use In Commerce: 1952/06/00 CHEESE FLAVORED PUFFED CORN SNACKS		

U.S. Registration No.	2312008	Application Date	03/25/1999
Registration Date	01/25/2000	Foreign Priority Date	NONE
Word Mark	CHEETOS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1998/11/27 First Use In Commerce: 1998/11/27 Cheese flavored puffed corn snacks		

U.S. Registration No.	2840688	Application Date	12/29/2000
Registration Date	05/11/2004	Foreign Priority Date	NONE



Word Mark	CHEETOS
Design Mark	
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 2001/11/01 First Use In Commerce: 2001/11/01 CHEESE FLAVORED PUFFED CORN SNACKS

U.S. Registration No.	2825885	Application Date	03/06/2002
Registration Date	03/23/2004	Foreign Priority Date	NONE
Word Mark	TWISTED CHEETOS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2002/12/00 First Use In Commerce: 2002/12/00 CORN-BASED SNACKS, NAMELY, PUFFED CORN SNACKS		

U.S. Registration No.	2680627	Application Date	03/22/2002
Registration Date	01/28/2003	Foreign Priority Date	NONE
Word Mark	CHEETOS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2001/02/25 First Use In Commerce: 2001/02/25 CORN-BASED SNACK FOODS, NAMELY, PUFFED CORN SNACKS		

U.S. Registration No.	2683228	Application Date	03/22/2002
Registration Date	02/04/2003	Foreign Priority Date	NONE
Word Mark	CHEETOS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2001/02/25 First Use In Commerce: 2001/02/25 CORN-BASED SNACK FOODS, NAMELY, PUFFED CORN SNACKS		

U.S. Registration No.	2677619	Application Date	03/22/2002
Registration Date	01/21/2003	Foreign Priority Date	NONE
Word Mark	CHEETOS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2001/02/25 First Use In Commerce: 2001/02/25		

	CORN-BASED SNACK FOODS, NAMELY, PUFFED CORN SNACKS		
U.S. Registration No.	2780545	Application Date	06/19/2002
Registration Date	11/04/2003	Foreign Priority Date	NONE
Word Mark	CHEETOS TWISTED		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2002/12/00 First Use In Commerce: 2002/12/00 CORN-BASED SNACK FOODS, NAMELY, PUFFED CORN SNACKS		
U.S. Registration No.	2925813	Application Date	11/27/2002
Registration Date	02/08/2005	Foreign Priority Date	NONE
Word Mark	CHEETOS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2004/02/12 First Use In Commerce: 2004/02/12 Cheese flavored puffed corn snacks, sold as an ingredient of snack mix consisting of tortilla chips, multigrain snack chips, cheese flavored puffed corn snacks, pretzels, and/or ready-to-eat cereal		
U.S. Registration No.	2926421	Application Date	05/17/2004
Registration Date	02/15/2005	Foreign Priority Date	NONE
Word Mark	CHEETOS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1999/01/01 First Use In Commerce: 1999/01/01 CRACKERS		
Attachments	76302448#TMSN.gif ( 1 page )( bytes ) 76300054#TMSN.gif ( 1 page )( bytes ) 75666563#TMSN.gif ( 1 page )( bytes ) 76370051#TMSN.gif ( 1 page )( bytes ) 78501249#TMSN.jpeg ( 1 page )( bytes ) 76243098#TMSN.gif ( 1 page )( bytes ) 76000258#TMSN.gif ( 1 page )( bytes ) 74606393#TMSN.gif ( 1 page )( bytes ) 76435771#TMSN.gif ( 1 page )( bytes ) 78454751#TMSN.jpeg ( 1 page )( bytes ) 75723200#TMSN.gif ( 1 page )( bytes ) 76383188#TMSN.gif ( 1 page )( bytes ) 78457493#TMSN.jpeg ( 1 page )( bytes ) 78977351#TMSN.jpeg ( 1 page )( bytes )		

	73143062#TMSN.gif ( 1 page )( bytes ) 75667964#TMSN.gif ( 1 page )( bytes ) 76188184#TMSN.gif ( 1 page )( bytes ) 76378458#TMSN.gif ( 1 page )( bytes ) 76386028#TMSN.gif ( 1 page )( bytes ) 76386044#TMSN.gif ( 1 page )( bytes ) 76386095#TMSN.gif ( 1 page )( bytes ) 76428334#TMSN.gif ( 1 page )( bytes ) 78419925#TMSN.jpeg ( 1 page )( bytes ) grounds PITARITOS.pdf ( 5 pages )(169345 bytes )
--	--

## Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Joseph J. Ferretti/
Name	Joseph J. Ferretti
Date	12/05/2007

The grounds for opposition are as follows:

1. Opposer, Frito-Lay North America, Inc. through its predecessors in interest and title, and through its related companies, divisions and/or licensees (hereinafter individually and/or collectively referred to as "Opposer"), has been engaged in the manufacture and sale of snack foods for over fifty years and is now one of the largest manufacturers of snack foods in the United States.

2. Opposer's snack foods are marketed and sold in tremendous quantities on a nationwide basis, supported by tens of millions of dollars of advertising and promotion each year. Opposer's food products are sold in almost every supermarket in the United States as well as in numerous convenience stores, vending machines, mass merchandise stores, schools and other outlets.

3. Opposer has used the marks FRITOS and DORITOS, as well as CHEETOS and TOSTITOS, and variants thereof on and in connection with snack foods and related products, including, but not limited to, corn based snack products at different times, beginning on September 30, 1948. Since a date long prior to the filing date of the above identified application and continuing through the present, FRITOS and DORITOS, as well as CHEETOS and TOSTITOS have been identified with Opposer and have appeared on a tremendous amount of product packaging, advertising, national television commercials, in-store display racks, trucks, signage, point-of purchase material, etc.

4. Opposer has, by virtue of incredibly extensive usage, advertising and promotion built up a very high level of consumer and trade recognition symbolized by its marks FRITOS and DORITOS, as well as CHEETOS and TOSTITOS. Due to extensive public exposure to, and awareness by, consumers and the trade, the FRITOS and DORITOS, as well as CHEETOS and TOSTITOS marks are famous and have acquired and now possess an extremely favorable reputation and distinctiveness with an invaluable amount of goodwill, solely signifying Opposer as the source of food products of high quality.

5. Opposer's sales of FRITOS and DORITOS, as well as CHEETOS and TOSTITOS products exceed hundreds of millions of dollars each year. By virtue of its tremendous sales success, and extensive and popular advertising and promotional efforts, the FRITOS and DORITOS, as well as CHEETOS and TOSTITOS trademarks have long enjoyed strong brand recognition and distinctiveness which have resulted in a highly favorable reputation and goodwill among the trade and consumers as identifying high quality snack food products manufactured and exclusively sold by Opposer.

6. Opposer has used the marks FRITOS and DORITOS, as well as CHEETOS and TOSTITOS, and variants thereof (hereinafter collectively known as the "FRITO-LAY Marks") to identify other related snack food products manufactured and sold exclusively by Opposer. By virtue of similarly extensive sales, advertising and promotion as described hereinabove, these variants have also acquired a favorable reputation among consumers and the trade and have created a multiplicity and/or family of marks incorporating the FRITOS and DORITOS, as well as CHEETOS and TOSTITOS designations which further reinforces the distinctiveness, fame and favorable reputation enjoyed by Opposer, its FRITO-LAY marks and its various snack food products, many of which are salted, seasoned and flavored in various ways.

7. Indeed, the tremendous commercial acceptance and success of many of the Opposer's snack foods is due in large measure to its innovative and continuous introduction of a variety of unique and special seasonings and flavorings for its snack chips and snack foods. Since first introducing FRITOS and DORITOS, as well as CHEETOS and TOSTITOS snacks, Opposer has expanded its product lines to include different styles and flavors.

8. As a result of the extensive and continuous advertising, sale, use and promotion of products bearing Opposer's FRITO-LAY Marks for over 40 years and their high quality, said marks have acquired substantial public and consumer recognition

throughout the United States, enjoy valuable goodwill, have become famous and have become assets of considerable value to Opposer.

9. On information and belief, on March 21, 2007, Applicant filed Application Serial No. 77/137061 to register the mark PITARITOS for “flour based chips; grain-based chips; pita bread; pita chips,” in International Class 30, based on an intent to use the mark in commerce.

10. Opposer has priority over Applicant because its trademark application filing dates, use and/or registration dates precede the filing date of Applicant’s PITARITOS mark.

11. Registration of Applicant’s alleged mark which is the subject of this opposition is barred by the provisions of Section 2(d) of the Trademark Act of 1946 because the said mark consists of or comprises a mark which so resembles a mark previously registered in the United States Patent and Trademark Office and/or used in the United States by Opposer and not abandoned, as to be likely, when used in connection with the alleged goods of the Applicant to cause confusion, mistake or deception.

12. Applicant’s alleged PITARITOS mark and Opposer’s FRITO-LAY Marks are similar in their overall commercial impression, sound and appearance. These similarities are further enhanced in view of Opposer’s prior use and registration of various FRITOS and DORITOS, as well as CHEETOS and TOSTITOS Marks such that on information and belief, consumers are likely to perceive Applicant’s claimed mark as similar or related to Opposer or Opposer’s marks.

13. On information and belief, the goods/services to which Applicant’s alleged PITARITOS trademark will be applied and the goods upon which Opposer’s FRITO-LAY Marks are registered and/or extensively used are or are likely to be similar, competitive, related or complementary products. On information and belief, they appeal or will appeal to the same class of purchasers, and are goods of a type which are often sold through the same channels of trade.

14. Accordingly, Applicant's alleged PITARITOS mark so resembles Opposer's previously used and registered FRITO-LAY Marks, as to be likely to cause confusion, to cause mistake or to deceive. The likelihood of confusion, mistake or deception that would also arise from concurrent use and registration of the applied for mark with Opposer's use and registration of its FRITO-LAY Marks is that (a) persons are likely to believe that Applicant's products have their source in Opposer, or (b) that Applicants and their goods/services are in some way legitimately connected or affiliated with, sponsored, approved, endorsed or licensed by Opposer when, in fact, they are not. Accordingly, registration of Applicant's PITARITOS mark is barred by the provisions of Section 2(d) of the trademark Act of 1946, 15 U.S.C. § 1052(d).

15. Applicant's alleged mark which is the subject of this opposition so resembles Opposer's previously used and registered FRITO-LAY Marks, as to be likely to constitute a false representation that Applicant's goods/services are approved or sponsored by Opposer or that Applicant's mark which is the subject of this opposition is a version of Opposer's marks and/or products/services, thereby deceiving the public, causing confusion or mistake and causing damage to Opposer within the meaning of 15 U.S.C. §1063.

16. Further, Opposer's inherently distinctive FRITO-LAY Marks became famous long prior to the filing date of Applicant's application-in-opposition and/or any claimed date of first use by Applicant of the PITARITOS mark which is the subject of U.S. Application Serial No. 77/137061. Registration and use of Applicant's alleged PITARITOS mark would likely dilute the distinctiveness of Opposer's famous and highly distinctive FRITO-LAY Marks in violation of 15 U.S.C. § 1125(c). Accordingly, Applicant's alleged mark is not entitled to registration under 15 U.S.C. § 1052(f) and Section 13 of the Lanham Act, 15 U.S.C. § 1063.

17. Opposer will be damaged by the registration sought by Applicant within the meaning of 15 U.S.C. §1063 because such registration would support and assist Applicant in the confusing, misleading and/or dilutive use of Applicant's alleged PITARITOS mark, and would give color of exclusive statutory rights to Applicant in violation and derogation of the prior and superior rights of Opposer.

19. In view of the foregoing, issuance of a registration to Applicant for its claimed PITARITOS mark which is the subject of Application Serial No. 77/137061 would, therefore, be damaging to Opposer's common law marks and federal registrations within the meaning of Section 13 of the Lanham Act, 15 U.S.C. §1063.